

# STATE AND LOCAL EFFORTS IN MANAGING RIPARIAN BUFFER ZONES

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## SUMMARY

The importance of protecting Georgia's riparian systems cannot be overestimated. An adequate supply of safe, clean drinking water – much of which is drawn from the state's rivers – is necessary to protect the health and welfare of the public, as well as to provide a basis for the state's future growth and development. Riparian systems also provide unique recreational opportunities and important wildlife habitat.

Land use along streams can have a profound effect on river water quality and the health of riparian ecosystems. Unregulated development along stream banks can result in sediment and other pollutants running into the stream, and can also increase the frequency and severity of flooding. With the state experiencing unprecedented growth, new development is inevitably encroaching on the state's riparian systems. Therefore, management of land use in these areas has become a critical issue.

There are two means by which either state or local government can manage land use in critical resource areas:

- 1) Through outright government ownership of these lands -- or at least ownership of the development rights in such areas.
- 2) By using incentives or regulation to encourage the private owners of properties in critical resource areas to use their land in a manner that does not harm the resources.

Since public ownership of all of the state's critical riparian resource zones is clearly beyond the financial means of either state or local governments, protection of riparian resources necessarily requires government use of incentives or regulation to encourage private property owners to carry some of the burden of protecting these resources.

Georgia's tradition of "home rule" (the principle, embedded in the State Constitution, of local management

of local affairs) means that local governments are granted virtual autonomous control over the management of land use within their respective jurisdictions. As a result, the state must look to local governments to administer the regulations or incentives necessary to encourage private landowners to protect critical riparian resources.

The traditional technique local governments would use to manage land uses is zoning. Zoning may be used for such purposes as restricting inappropriate types of land use in (or near) riparian resource areas or to mandate set aside of buffer areas to separate water resources from development. One problem is that little guidance has been provided to local governments as to what they should be using zoning (or other land use management tools) to encourage – i.e., what are the appropriate type of land uses or development practices that will best protect riparian systems? The state has developed a set of minimum protection criteria for river corridors, wetlands, and water supply watersheds (discussed below) but more work is clearly needed in this area.

Because urban sprawl clearly works against any type of environmental conservation, including protection of riparian systems, it is useful to look beyond zoning and consider any technique a local government might use to discourage sprawl as useful in protecting riparian resources. Some examples of these techniques include:

**Conservation Tax Credits** – *programs that allow landowners in critical resource areas to claim tax credits to offset their local property tax bills.* Conservation tax credits encourage landowners to continue holding land in its current use rather than sell their land for development. This eases the development pressure on land in critical resource areas.

**Development Caps** – *limitations on the total amount of development that will be allowed within a community.* Development caps explicitly define the total amount of development that will be allowed in a community, such as

Boca Raton, Florida's 40,000 dwelling unit cap and Sanibel, Florida's 9,000 dwelling unit cap. Development caps are usually accompanied by a carrying capacity analysis that determines the total number of residents that can be served without endangering the local ecosystem. The courts have typically overturned development caps that were not backed by a comprehensive plan and that did not forward a legitimate public purpose.

**Development Impact Fees** – *fees charged to the developer that are used to help to defray some of the public costs of development.* New development creates a need for additional schools, roads, sewer lines, and recreational facilities. Development impact fees are used to charge developers for the costs associated with these additional public services. The collected fees are used to fund the system improvements required to serve the new development.

**Development Rate Allocation Systems** – *growth management systems that set limitations on the total amount of development allowable within a certain time period.* Depending on the community's growth management goals and the purpose of the regulation, most rate allocation systems place an annual cap on the total number of new residential units or commercial space allowable in a community over a period of one to three years. Petaluma, California limits the total number of new residential units to a 500 annual average not to exceed 1,500 over a three-year period. A similar policy in Boulder, Colorado caps residential development at 200 new housing units per year.

**Differential Assessment Programs** – *tax assessment programs that permit land in critical resource areas to be assessed at its current use value, rather than its fair market value.* Since fair market values are generally higher, especially in urban fringe areas, differential assessment can be used as a way to encourage landowners to maintain the current use of their land, even if it is currently unused or is being used for agricultural purposes. This provides an incentive to conserve land, thus limiting urban sprawl.

**Minimum Density Zoning** – *zoning ordinances that require development to stay above a certain density.* This contrasts with the traditional approach to regulating maximum densities. By setting a minimum number of allowable units per acre or maximum lot sizes, zoning can be used to promote compact urban development patterns

in areas targeted for higher density growth. Areas around transit stations are typically those where minimum densities may be required.

**Performance Zoning** – *zoning schemes that rely on environmental standards as a way to assess the feasibility of development projects.* This contrasts with the traditional exercise of consulting the list of allowable uses within a zone. Traditional zoning defines land use zones and proscribes the types of uses that will be allowed within each zone. By narrowly focusing on land uses, zoning administrators may "miss the forest for the trees" and approve developments that meet broad land use categories, even though these land uses may create substantial environmental problems. Performance zoning, in contrast, defines specific environmental standards that must be met in order to gain development approval. Developments that meet these defined standards are permitted within the zone. Performance zoning can be used as a replacement or a supplement to existing zoning regulations. Portland, Oregon regulates land according to traditional land use categories but supplements these regulations with a performance standard system designed to regulate external impacts of new development.

**Targeted Tax Abatement** – *a program that encourages certain types of development in targeted areas through property tax reductions.* By tying tax abatement provisions to local growth management goals, tax abatement can act as a financial inducement to those developers who wish to build developments that meet objectives established by the community. Property tax abatement can be used to encourage affordable housing, infill development, or job-creating commercial development in economically depressed areas.

**Transferable Development Rights Programs** – *initiatives that permit development rights trading between property owners in "sending" and "receiving" areas.* Under a system of transferable development rights, landowners in areas designated for land conservation (such as environmentally sensitive areas) are allowed to sell the right to develop land to landowners in areas that have been designated for additional growth. Those in a receiving zone who purchase additional development rights are granted permission to build at a higher density than ordinarily permitted by the base zoning.

**Two-rate Taxation** – *an approach to property taxation where land and its buildings or structures are*

*taxed at different rates, the rate on land being significantly higher than the rate on buildings. This contrasts with the traditional method of taxing both the land and its building at the same rate.* The traditional land-building property assessment method creates an incentive for sprawl as local governments seek development to improve land in their community and increase property tax revenues.

**Urban Growth Boundaries** – *boundary lines that define the extent of future urban growth.* Urban growth boundaries define the location of future urban development - urban development is allowed within an urban growth boundary, while areas outside the boundary are preserved as rural or agricultural land.

**Urban Service Boundaries** – *defines the boundaries beyond which infrastructure would not be provided.* By defining areas of urban service provision, jurisdictions can avoid unnecessary infrastructure costs associated with extending infrastructure to “leap-frog” developments and limit the rate of rural to urban land conversion.

With modest budgets and staffs, many smaller local governments are probably willing but unable to effectively implement zoning, let alone some of the other techniques listed above. Administering zoning and other land use management programs can be an expensive and staff-intensive proposition. Smaller local governments do have the option of sharing administration and enforcement responsibilities with other jurisdictions – to spread the costs, but this runs against the grain of Georgia’s “home rule” tradition. Without financial assistance or other pressure from the state, it is unlikely that smaller local governments will pursue such alternatives, and actual implementation of riparian resource protection measures will languish in many areas.

It should be noted that the state is currently requiring local government adoption of land use management practices for protection of certain water-based resources. Under the Georgia Planning Act of 1989 and the Mountain and River Corridor Protection Act of 1992, local governments are required to adopt minimum protection measures for five types of critical environmental resources (wetlands, water supply watersheds, groundwater recharge areas, river corridors, and mountains) in order to maintain eligibility for certain state grant and loan programs. The required protection measures, developed by the Georgia Department of Natural Resources, include such

requirements as establishing buffers along streams, limiting density of residential development, restricting certain types of land uses, or limiting the percentage of impervious surfaces for new developments. Of particular interest from a riparian conservation perspective are the river corridor protection requirements, contained in the Mountain and River Corridor Protection Act. These requirements call for maintenance of an undisturbed natural vegetative buffer of 100 foot width along both banks of any river with a mean annual flow of 400 cubic feet per second or greater.

There are many other things the state could be doing to encourage local action to protect critical areas, including riparian systems. For example:

**State Capital Investment Priorities** – *state funding objectives that are geared toward creating efficient, cost-effective patterns of urban service delivery.* Capital investment priorities establish criteria for defining the state’s “priority funding areas.” As a result of a “bottom up” process, local governments define the location of all priority funding areas in accordance with the state’s infrastructure and economic development investment priorities. Priority funding areas normally include existing municipalities, areas planned for industrial development, enterprise zones, neighborhood revitalization areas, and any other area where adequate urban infrastructure and services are available.

**State Environmental Quality Acts** – *comprehensive state environmental legislation geared towards ensuring that significant environmental impacts are addressed prior to project approval.* California requires that an Environmental Impact Report be prepared for all development projects which may cause a direct or indirect impact on significant environmental resources.

**State Policy Assessment** – *a detailed analysis of state agency policies, rules, and regulations to determine whether they are in conflict with the state’s growth management goals.* The location of state investments, the tax incentives offered to private citizens, the state’s land development regulations, and the criteria for receiving state grants all contribute to shaping statewide development patterns. A state policy assessment can be used to identify which of these policies are inconsistent with statewide development goals. State policy assessments can lead to requiring change of the inconsistent policies by executive order of the governor or

other means.

**Vertical Plan Consistency Requirements** – *state requirements for uniformity between local plans, regional plans, and the state plan.* Vertical plan consistency requirements help to ensure consistency between state growth management goals and local planning. In states with “bottom up” planning, local governments are granted considerable leeway to adopt and forward their own development goals, and the state attempts to develop a state plan that consolidates the goals of the local plans. The state generally acts as a coordinator and mediator of sub-state conflicts. In states with “top down” forms of vertical consistency, the state establishes urban development goals that must be implemented by local governments.